



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES

William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

March 25, 2021

Mr. John Sergio
885 Clarence Gillen Road
Sparta, TN 38583

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7009 2820 0003 6035 9145

Subject: **DIRECTOR'S ORDER WPC21-0040**
Burgess Falls RV Park
White County, Tennessee

Dear Mr. Sergio,

Enclosed is a Director's Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Water Resources for violation of the Water Quality Control Act.

The above violation has resulted in a **full penalty assessment of \$1,210.00, with an upfront civil penalty payment of \$303.00 and damages of \$405.99, due on or before the 31st day after receipt of this Order.** The damages are expenses incurred by the Division while investigating the violations contained herein. The upfront fee is an allocated portion of the total penalty. The remaining penalties are contingent upon timely completion of the requirements of this Order. Additional penalties may be assessed if the requirements of this Order are not timely met, or if the Site does not stay in compliance with the Act.

Please read the Order carefully and pay special attention to the Notice of Rights section. The required due dates in the Order are based on the date the Respondent receives the Order, and not the date that the Order was signed by the Director. The Division appreciates your cooperation in this matter. Should you have any questions, please contact Mr. Mike Lancaster at (615) 532-6371 or by email at michael.lancaster@tn.gov, or you may contact me at (615) 532-0676 or by email at jessica.Murphy@tn.gov.

Sincerely,

Jessica Murphy, Manager
Compliance and Enforcement Unit

EJM: MSL

cc: DWR – Case File WPC21-0040
DWR – Matthew Harris – matthew.harris@tn.gov
DWR – Jeff Patton – jeff.patton@tn.gov
DWR – Brad Ulmer – brad.ulmer@tn.gov
DWR – Grant Ruhl – grant.ruhl@tn.gov

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
SERGIO FAMILY TRUST,)	
)	
RESPONDENT.)	CASE NUMBER WPC21-0040

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources (“Division”) by the Commissioner of the Tennessee Department of Environment and Conservation (“Department”). The Commissioner is responsible for administering the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (“Act”).

II.

The Sergio Family Trust (“Respondent”) owns the subject property listed in the White County Register of Deeds on map 011 parcel 001.05 (“Site”). Service of process may be made on the Respondent through its registered agent, John Sergio, at 885 Clarence Gillen Road, Sparta, Tennessee 38583.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, Tenn. Code Ann. § 69-3-115, and has authority to assess damages incurred by the state resulting from the violation, Tenn. Code Ann. § 69-3-116. The Board of Water Quality, Oil and Gas (“Board”) has promulgated rules governing general water quality criteria and use classifications for surface waters. Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 69-3-107(13), and has delegated such authorities to Jennifer Dodd.

IV.

The Respondent is a “person” under the Act. Tenn. Code Ann. § 69-3-103(27).

V.

A person must obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Tenn. Code Ann. § 69-3-108(b). Coverage under the General Permit for Discharges of Stormwater Associated with Construction Activities (CGP) is required for discharges of stormwater from construction activities that result in soil disturbances of one or more acres, and may be obtained by submitting a Notice of Intent (NOI), a site-specific Stormwater Pollution Prevention Plan (SWPPP), and the appropriate fee.

VI.

Discharges from the Site ultimately reach “waters” of the state. Tenn. Code Ann. § 69-3-103. Specifically, the Site discharges to Falling Water River, which is impaired as a result of excess siltation.

FACTS

VII.

On February 2, 2021, Division personnel investigated a complaint of land disturbance at the Site and observed that more than one acre of soil had been disturbed for construction. The Respondent had not obtained CGP coverage from the Division for this land disturbance.

VIII.

On February 2, 2021, the Division issued a Notice of Violation (NOV) to the Respondent. The NOV notified the Respondent that it had unlawfully disturbed more than one acre of soil at the Site and gave the Respondent until February 14, 2021, to submit a NOI, a SWPPP, and an application fee, and to obtain coverage under the CGP.

IX.

On February 4, 2021, Mr. Tom Sergio, owner of the contract company performing construction at the Site, submitted the NOI, SWPPP, and engineering plans for the site to the Division.

X.

On February 8, 2021, Division staff sent an email to Tom Sergio and to his consultant, Stuart Rayburn, requiring specific revisions to the permit documents before a permit could be issued. Mr. Rayburn replied on the same date that he should be able to provide the revisions by the

next day. Currently, the Division has not received the revisions, and construction at the Site is still not permitted.

XI.

The Division incurred damages in the amount of \$405.99 in the course of investigating this violation.

VIOLATIONS

XII.

By discharging pollutants to waters of the state or placing substances at a location from which it is likely that the discharged substance will move into waters of the state without a permit, the Respondent has violated sections 69-3-108(b) and 114(b) of the Tennessee Code Annotated, which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized; and

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to this part;

or to fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XIII.

Pursuant to the Act, Tenn. Code Ann. § 69-3-109, -115, and -116, the Respondent is issued the following Order and Assessment. All documentation relating to compliance schedule items in this Order and Assessment should be submitted electronically to DWRWater.Compliance@tn.gov or in duplicate to the addresses listed below:

Manager
Cookeville Environmental Field Office
Division of Water Resources
1221 South Willow Avenue
Cookeville, TN 38506

AND

Manager
Enforcement and Compliance Unit
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243

- 1) **The Respondent is assessed a total civil penalty of \$1,210.00 to be paid to the Division as allocated in Items 3 and 4.** All payments shall be submitted to the following address:

Treasurer, State of Tennessee
Division of Fiscal Services, Consolidated Fees
TN Department of Environment and Conservation
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

- 2) **The Respondent is hereby assessed \$405.99 in damages, payable to the Division on or before the 31st day after receipt of this Order.**
- 3) **The Respondent shall pay an upfront civil penalty of \$303.00 to the Division on or before the 31st day after receipt of this Order.**
- 4) The Respondent shall, on or before the 31st day after receipt of this Order, submit to the Division the required revisions of the SWPPP and obtain proper permitting for CGP at the Site.

If the Division requires any further revisions to the NOI, the SWPPP, or the application fee, the Respondent shall submit any such revisions within 15 days of receiving notice from the Division. If the Respondent fails to comply with this Item, the Respondent shall pay \$182.00 to the Division for each day of noncompliance, not to exceed a total of \$907.00.

This Order shall be considered closed 90 days from receipt, provided all requirements of the Order have been met, any outstanding penalties have been paid, and Respondent is in substantial compliance with the Act.

The Director may, for good cause shown, extend the compliance dates contained within this Order. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include, at a minimum, the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the Director will be in writing. Should the Respondent fail to meet the requirement by the extended date, an associated Civil Penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Order could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs.

RESERVATION OF RIGHTS

In issuing this Order, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or

damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent may appeal this Order. Tenn. Code Ann. §§ 68-221-712 and 68-221-713. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order, or this Order will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-221-714; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. No one may represent another person in a contested case proceeding unless they are an attorney licensed to practice law in Tennessee. Governments and artificial persons (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses

associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.


Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov. Attorneys should contact the undersigned counsel of record. The case number, **WPC21-0040**, should be written on all correspondence regarding this matter.

Issued by the Director of the Tennessee Department of Environment and Conservation on this 29th day of March, 2021.


Jennifer Dodd (Mar 29, 2021 15:00 CDT)

Jennifer Dodd
Director of Water Resources
Tennessee Department of Environment and Conservation

Reviewed by:


Grant LeMaster Ruhl
BPR # 036182
Assistant General Counsel
Department of Environment & Conservation
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Nashville, Tennessee 37243
(615) 313-5682
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